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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/460,836	12/14/1999	GUY A. COSMO	395-6	3014

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EXAMINER

SIPOS, JOHN

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 01/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/460,836

Applicant(s)

COSMO, GUY A.

Examiner

John Sipos

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS

The following is a quotation of the second paragraph of 35 U.S.C. ' 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 17 is rejected under **35 U.S.C. ' 112, second paragraph**, as being **indefinite** for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The structure being claimed is indefinite in that the elements of the last paragraph are not structurally connected to the structure ion the rest of the claim. It is also is not clear to what the term "one relative the other" refers in the last line since no antecedence can be found to individual sealers, actuators or members.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

Claims 9 and 12-16 are rejected under **35 U.S.C. 103(a)** as being unpatentable over the patent to Merritt (3,094,823) in view of Fiesser (5,475,964). The patent to Merritt shows a packaging machine with a feeder spool holding a folded packaging means, an inverting mechanism comprising of feed rollers 20,30 and V-shaped wires 50,51 that reposition and open the folded material so that the fold is in a vertical orientation and a sealing and severing means 55,56 downstream from the inverting mechanism comprising of a heated bar with a flat head and an opposing sealing surface with a sharp surface. The Merritt device lacks the specific type of sealer recited in the claims. The patent to Fiesser shows a packaging machine in which a tubular film containing articles is transversely sealed by opposing members wherein one is a heated flat bar 26 and a non-heated, sharp cutting surface 25 that provide a clean cut in the film. It would

have been obvious to one skilled in the art to substitute the sealing mechanism of Fiesser for the sealing mechanism of Merritt to provide for a cleaner cut. The use of adjusting means (claim 14) to adjust the position of a well known mechanism would have been an obvious modification to one skilled in the art to permit the handling of different size articles.

Claims 10,11 and 17 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Merritt in view of Fiesser, as applied above, and further in view of Fukuda (5,347,795). The Merritt and Fiesser combination lacks the showing of gear connected pivot arms. The patent to Fukuda shows opposing sealing elements 20 that are pivoted into the sealing position and connected by gears for synchronous movement. It would have been obvious to one skilled in the art to provide the sealing mechanism of Merritt with a supporting pivoting structure as shown by Fukuda so that a more synchronized operation of the sealing arms is achieved. The use of a piston instead of a motor to actuate the sealing arms would have been an obvious modification. Regarding claim 17, note that the pivoting elements carrying the sealing bars 20 and the gear driving mechanism of Fukuda maintain the sealing bars in a parallel relationship as shown in Figures 13 and 16.

RESPONSE TO APPLICANT'S ARGUMENTS

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues with respect to claim 9 that the applied references do not show a "resilient" sealing surface but rather a non-resilient severing surface. It should be first noted that regardless of semantics in both the instant application and the applied patent to Fiesser the

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unheated element has a sharp surface that perform the same function. In both devices the sharp surface presses the film against the heated opposite element and due to the heat and pressure both the severing and sealing of the film portions will take place. These surfaces can therefore be considered as a "sealing" or a "severing" surface. Regardless the resiliency of the unheated element, lateral resilience is always present in tools and without further structural limitation the element 39 of Fiesser is considered to be resilient. It should also be noted that the use of resilient mounts or materials in opposing sealing/cutting elements is well known in the art. Such resilient structures are shown by Wirsig, Lane, Ramsey, Korzinek and Fukuda (Fig. 7A).

Applicant argues regarding the rejection of claims 10 and 11 that the references do not provide any incentive for combining them and that such incentive must be shown in the prior art rather than by the personal opinion of the Examiner. As set forth in Sections 2143 of the MPEP, the suggestion or motivation to modify or combine the references must either be in the references themselves or in the knowledge generally available to one of ordinary skill in the art (also see Section 2143. 01). The combination of the references as made in the above rejections is made based on the knowledge of one of ordinary skill in the art.

In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. *In re McLaughlin*, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 305-3579**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Peter Vo, can be reached at (703) 308-1789.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.


John Sipos
Primary Examiner
Art Unit 3721